



# FAIRFAX COUNTY

## BOARD OF ZONING APPEALS

**PUBLIC HEARING DATE:** January 6, 2010

**TIME:** 9:30 a.m.

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V I R G I N I A

**December 28, 2009**

### STAFF REPORT

**APPEAL APPLICATION A 2009-MA-010**

### MASON DISTRICT

<b>APPELLANT:</b>	Constantine Sarakinis
<b>LOCATION:</b>	3215 Hallran Road
<b>TAX MAP REF:</b>	61-2 ((4)) 12
<b>ZONING DISTRICTS:</b>	R-3
<b>SITE AREA:</b>	10,735 square feet
<b>NATURE OF APPEAL:</b>	Appeal of a determination that the appellant is maintaining three dwelling units in a single-family detached dwelling on property in the R-3 District in violation of Zoning Ordinance provisions.

CSB

For information, contact the Zoning Administration Division, Department of Planning and Zoning, 12055 Government Center Parkway, Suite 807, Fairfax, Virginia 22035-5505, 703-324-1314.

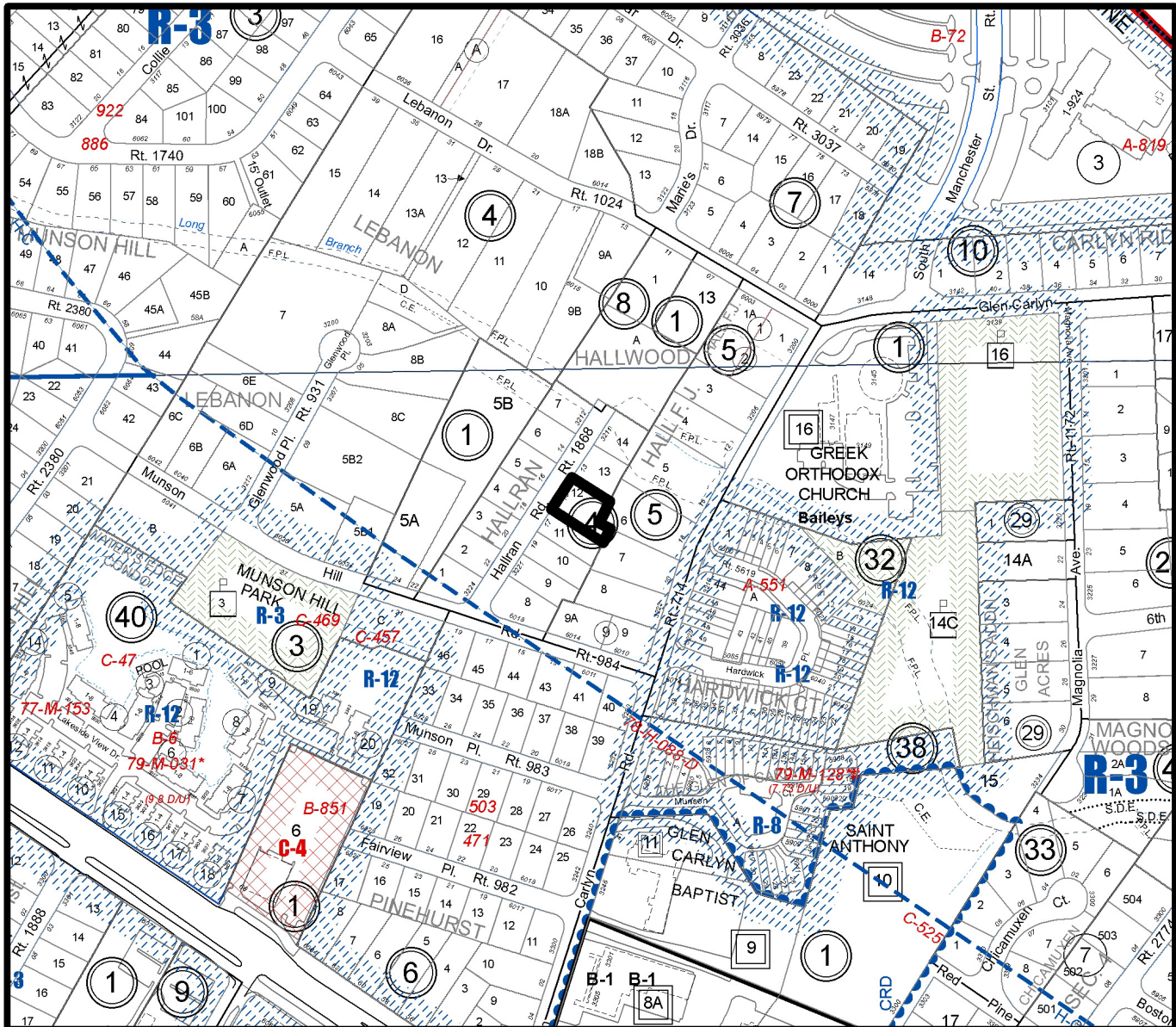


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# APPEAL APPLICATION

A 2009-MA-010

**CONSTANTINE SARA KINIS, A 2009-MA-010** Appl. under sect(s). 18-301 of the Zoning Ordinance. Appeal of a determination that appellant is maintaining three dwelling units on property in the R-3 District in violation of Zoning Ordinance provisions. Located at 3215 Hallran Rd. on approx. 10,735 sq. ft. of land zoned R-3. Mason District. Tax Map 61-2 ((4)) 12.



0 130 260 520 780 1,040 Feet

**DESCRIPTION OF APPEAL****Appellant:**

Constantine Sarakinis

**Issue:**

Appeal of a determination that the appellant is maintaining three dwelling units in a single-family detached dwelling on property in the R-3 District in violation of Zoning Ordinance provisions.

**Property Description:**

The property that is the subject of this appeal is located in the Hallran Subdivision, north of Leesburg Pike (Route 7), and west of Carlyn Road (Rte. 714). The property is zoned R-3, Residential District, Three Dwelling Units/Acre and consists of 10,735 square feet. The subject property is currently developed with a two-story, single-family detached dwelling. The appeal is the result of a Notice of Violation (NOV). At the time the NOV was issued, three complete and separate independent living facilities were located within the structure, each with facilities for living, sleeping, eating, cooking and sanitation. A copy of the zoning map sheet showing the subject property is provided on the previous page.

**Appellant's Position:**

The appellant's application and basis for appeal are set forth in Attachment 1.

**ZONING ORDINANCE PROVISIONS**

The provisions of the Zoning Ordinance that are pertinent to this appeal are listed below. The complete text of these provisions is provided as Attachment 2.

- Par. 5 of Sect. 2-302, Permitted Uses (General Regulations)
- Sect. 2-501, Limitation on the Number of Dwelling Units on a Lot
- Par. 7B of Sect. 3-303, Special Permit Uses (R-3 District)
- Definitions of DWELLING and DWELLING UNIT as set forth in Article 20 of the Zoning Ordinance.

## BACKGROUND

- According to Department of Tax Administration records, the original one-story dwelling on the property was constructed in 1956.
- The subject property was conveyed to the appellant Constantine Sarakinis at Deed Book 18838, Page 1436, recorded among the Fairfax County land records on October 17, 2006. A copy of the deed book pages is provided as Attachment 3.
- The zoning property file contains a building permit approved on October 23, 2006 for an open deck and a two-story addition to the existing dwelling, and a building permit dated November 6, 2006 for a change to the rear portion of the approved addition as submitted previously. A copy of the building permits and plat are provided as Attachment 4. According to the existing floor/demolition plan, the area to the right of the front entry was labeled as a “store room”, and was proposed to remain as such on the approved construction plan. This area later was discovered to be one of the two additional dwelling units established on the property. Copies of these plans are also included in Attachment 4.
- A prior zoning enforcement action on file for this property involved a complaint that there were at least two apartments in addition to the single family dwelling on the subject property. When Senior Property Maintenance / Zoning Inspector Rebecca Collingsworth inspected the site on February 1, 2007 and February 28, 2007, she found the home under construction and only occupied by one person. The complaint was closed on March 13, 2007, when another inspection was completed in the still unfinished house, which revealed that a stove and oven exhaust fan had been removed.
- A complaint was filed with the Zoning Enforcement Branch (ZEB) on September 12, 2008, alleging multiple dwelling units within the subject dwelling. On December 17, 2008, a zoning inspection was conducted at the subject property by ZEB staff. The inspection revealed that there appeared to be substantial construction not in accordance with the previously approved building permits and floor plans for the proposed addition, and that the residence was split into three separate, independent living areas, with each living area containing its own kitchen facilities and separate exterior entrances, which were also not shown on the approved plans. The first floor layout included a central living area and kitchen; a complete dwelling unit with separate access on the left side of the house containing a kitchen, bedroom, and bathroom; and another complete dwelling unit with separate access from the right side of the house containing bedroom, bath, kitchen, and sitting room (this unit is located in the portion of the floor plan labeled “storage room”). Photographs taken during the inspection and a sketch prepared by the inspector showing the actual layout of the first floor are provided as Attachment 5.
- On January 30, 2009, a Notice of Violation (NOV) was issued via delivery by the Fairfax County Sheriff’s Office to Constantine Sarakinis for maintaining three complete and separate dwelling units in the single family home on the subject property. The NOV directed the property owner to remove all facilities which serve to establish more than one dwelling unit, to maintain only one kitchen in the residence by removing the oven, microwave, range, sink, cabinets, countertops, refrigerator and freezers of the additional kitchens, remove all utility

connections for the additional kitchen facilities and to cap and seal these utility connections in the walls. In addition, the property owner was directed to arrange the interior of the dwelling so as to provide unrestricted access throughout the dwelling by removing all partitions and locked doors which create separate dwelling units. A copy of the NOV is included with the appeal application (Attachment 1).

- The subject appeal was filed on February 19, 2009, accepted on February 25, 2009 and was originally scheduled for public hearing before the Board of Zoning Appeals (BZA) on May 19, 2009.
- Staff met at the subject property on March 23, 2009 with the appellant, Mr. Constantine Sarakinis, the appellant's mother Ms. Irene Sarakinis, and their attorney, Mr. William Barnes Lawson. The appellant and his attorney spoke about the prospects of removing one of the dwellings and filing for a special permit application for an accessory dwelling unit in an attempt to retain the other accessory dwelling. During this meeting, Ms. Sarakinis acknowledged that an additional dwelling unit was intentionally constructed within the dwelling for purposes of creating a rental unit.
- On May 4, 2009 the appellant's attorney requested an administrative move of the appeal from May 19, 2009 to June 2, 2009, since the May 19, 2009 BZA hearing was to be cancelled, as there were no other cases scheduled for that day.
- On May 13, 2009, the appellant's attorney requested an administrative move of the appeal from June 2, 2009 to September 22, 2009 to allow time for processing of a special permit application being requested for an accessory dwelling unit, to address the violation.
- On November 4, 2009, the appellant's attorney requested an administrative move of the appeal from September 22, 2009 to January of 2010, which was subsequently scheduled for January 6, 2010, to allow for continued processing of the special permit application requested for an accessory dwelling unit.
- The Special Permit SP 2009-MA-088 was scheduled for public hearing on November 17, 2009.
- Subsequent to the issuance of the NOV and during the process of application for a special permit for an accessory dwelling unit, an inspection was conducted on November 6, 2009, which revealed that cabinetry, countertops, and appliances associated with the kitchen on the left side of the dwelling had been removed.
- On November 17, 2009, the BZA denied Special Permit SP 2009-MA-088 for an accessory dwelling unit on the subject property. The resolution is included as Attachment 6.

## **ZONING ADMINISTRATOR'S POSITION**

This is an appeal of the determination that the appellant is maintaining three separate dwelling

units on the subject property in violation of Zoning Ordinance provisions. It is noted that since the Notice of Violation was issued, one dwelling unit has been removed through dismantling the kitchen. It is staff's position that it has been clearly demonstrated through zoning inspections that the appellant is or has maintained three, separate, independent dwelling units on the subject property in violation of Zoning Ordinance provisions. The appellant enjoys no legal nonconforming rights with respect to the second or third dwelling unit, as they were never legally established, and no legal remedy was available to the appellant or previous owners when the second and third dwelling units were established.

Staff had previously made two options to remedy the violation available to the appellant: one being removal of two of the three existing kitchen facilities and all facilities which serve to establish more than one dwelling unit, including maintenance of only one kitchen in the residence and to arrange the interior of the dwelling so as to provide unrestricted access throughout the dwelling by removing all partitions and locked doors which create separate dwelling units. The second option was to remove one of the kitchens and obtain approval of a Group 9 Special Permit for an accessory dwelling unit from the BZA.

As noted above, the appellant did pursue a Special Permit for an accessory dwelling unit, and this application was denied by the BZA on November 17, 2009. Therefore, removal of any remaining second kitchen components and all facilities which serve to establish more than one dwelling unit is required to bring the dwelling into compliance, including maintenance of only one kitchen in the residence and to arrange the interior of the dwelling so as to provide unrestricted access throughout the dwelling by removing all partitions and locked doors which create separate dwelling units.

As noted in the Background section above, a zoning inspection was conducted in response to a complaint on December 17, 2008. It was observed during this inspection that the house on the property contained three complete and independent dwelling units, and that a substantial amount of interior construction work had been done which did not follow the approved building plans. The right side of the dwelling was labeled as a "storage area" in both the existing and proposed plans, however this area contained a bedroom, bathroom, sitting room, and kitchen, and had its own exterior entrance. The left side of the dwelling was illustrated to remain as three bedrooms and a bathroom, however an additional kitchen was instead discovered there. This portion of the dwelling also had an outside entrance not illustrated on the plans.

A dwelling unit is defined in Article 20 of the Zoning Ordinance as one or more rooms in a residential building "which are arranged, designed, used or intended for use as a complete, independent living facility which includes provisions for living, sleeping, eating, cooking and sanitation." Sect. 2-501 of the Zoning Ordinance states, in relevant part, that "there shall not be more than one (1) dwelling unit on any one (1) lot, nor shall a dwelling unit be located on the same lot with any other principal building." Zoning Enforcement staff has determined based on inspection that the main level of this dwelling contained three separate dwelling units within the single-family dwelling and that each contained separate facilities for living, sleeping, eating, cooking and sanitation. In addition to the standard kitchen on the main level of the house, there were full kitchens in each of the other two apartments. One, which was located on the left side of the dwelling, has been removed, but one remains on the right side of the house which contains cabinets and a sink, but from which cooking facilities had been removed.

The provisions of Sect. 2-501 of the Zoning Ordinance prohibit the location of more than one dwelling unit on any lot, with few exceptions, none of which apply to the appellant. Therefore, the appellant is in violation of Sect. 2-501 of the Zoning Ordinance. In addition, the appellant is in violation of Par. 5 of Sect. 2-302 of the Zoning Ordinance which states that “no use shall be allowed in any district which is not permitted by the regulations for the district.” The R-3 District permits single-family detached dwellings. It does not permit multiple family dwelling units.

The appellant’s attorney states in the appeal application that there are not three separate dwelling units present on the subject property, but rather there are merely two kitchens. A zoning inspection conducted on December 17, 2008 by Zoning Inspector Margaret DeLean revealed three kitchens and a floor plan that showed areas which were designed, arranged, and used as three complete, independent living facilities. As stated above, Section 2-501 allows one dwelling unit per lot unless approval of a Special Permit is granted by the BZA for an additional dwelling unit.

The appellant has argued that based on the previous inspections conducted by Zoning Enforcement staff and final building inspection of the addition in February of 2007, since a violation of the Zoning Ordinance with respect to multiple dwelling units was not established at that time, that the issue was a “thing decided”. However, as discussed above, there was only one resident of the dwelling at the time, and the approved building plans showed a residence with no accessory dwelling units proposed.

The only legitimate/legal way to establish a second dwelling unit on the subject property would have been through the approval of a special permit for an accessory dwelling unit. However, given that the appellant’s request for a Special Permit for an accessory dwelling unit was denied by the BZA, staff maintains that the appellant now has only one option available, to remove all facilities which serve to establish more than one dwelling unit, to have only one kitchen remain in the residence, and to arrange the interior of the dwelling so as to provide unrestricted access throughout the dwelling by removing all partitions and locked doors which create separate dwelling units.

In conclusion, it has been clearly demonstrated through zoning inspections that the appellant is currently maintaining two separate, independent dwelling units on the subject property in violation of Zoning Ordinance provisions. Further, in an effort to keep the second dwelling the appellant filed a SP application which was denied by the BZA. Therefore, staff recommends that the BZA uphold the Zoning Administrator’s determination regarding the multiple dwelling units as set forth in the Notice of Violation dated September 12, 2008.

#### **ATTACHMENTS:**

1. Appellant’s Application and Basis for Appeal

2. Applicable Zoning Ordinance Provisions
3. Building Permits and House Location Plats, Floor Plans
4. Deed Book 18838, Page 1436
5. Photographs Taken During December 17, 2008 Inspection and Sketch of Actual First Floor Layout
6. BZA Resolution for SP 2009-MA-088